Perumal a/l Manickam v Malaysian Co-Operative Insurance Society Ltd

HIGH COURT (KOTA BHARU) — ORIGINATING SUMMONS NO 24–156–93
IDRIS YUSOFF J
21 FEBRUARY 1995

***Insurance** — Life insurance — Construction of policy — Whether insurer obliged to pay immediately upon insured's death — Proof of insured's age required in proposal form — Whether production of insured's birth certificate was condition precedent to payment of moneys — Insurance Act 1963 ss 15A & 44*

The plaintiff had bought a life insurance policy ('the policy'), on the life of his son, Magindran s/o Perumal ('the deceased'), who died on 25 August 1991 in a road accident. The deceased was then aged 16 years and still single. The policy was issued by the defendant with the remark 'not admitted' against the stated age of 16 in the policy schedule and the proposal form contained the words, 'Evidence of age must be submitted with this proposal form or soon after acceptance'. No beneficiary was named in the policy and the plaintiff brought this claim in his capacity as a proper claimant. The plaintiff submitted to the defendant a 'Death claim application' and was asked to furnish certain documents, including the deceased's birth certificate, to indicate that he was the sole proper claimant but did not do so until 11 July 1994. During this time, when no payment was made, the plaintiff filed this originating summons on 2 June 1993 seeking, inter alia: (a) a declaration that the plaintiff was legally entitled to all moneys under the policy issued by the defendant and taken out in the name of the deceased; (b) an order that the defendant should pay the policy moneys to the plaintiff in his capacity as a proper claimant within the meaning of s 44 of the Insurance Act 1963 ('the Act'); (c) interest at the rate of 8%pa or higher from the date of the deceased's death; and (d) costs. The issue before the court was whether the production of the deceased's birth certificate was a condition precedent to the payment of the policy moneys.

Held, ordering payment of the policy moneys to the plaintiff but disallowing the plaintiff's claim for interest for late payment:

(1) The defendant had fulfilled the requirement of s 15A of the Act by issuing a printed notice on the policy stating that proof of the age of the deceased may be required prior to the payment of the sum insured. Furthermore, as payment would be made upon satisfactory proof being given to the defendant on, inter alia, the correctness of the deceased's date of birth, such proof was a condition precedent to the payment of the policy moneys.

(2) In view of the words of s 44 of the Act, it was clear that moneys that are payable under a life policy can be paid to a proper claimant. However, in this case, the moneys were payable only when there was due compliance with the three prerequisites set out in the policy. Therefore, the words 'are payable' in s 44 of the Act referred to the obligation to pay, though not necessarily immediately upon death.

(3) The plaintiff is entitled to all the policy moneys if there was no other beneficiary to the estate of the deceased. As the estate of the deceased had been kept out of the insurance moneys, the plaintiff was entitled to interest at 8%pa on the policy moneys from the date when the deceased's birth certificate was served on the defendant, ie 11 July 1994, and not from the date of death.

Obiter:

Where the named beneficiary in a life insurance policy does not qualify as a proper claimant, the position of the insurers remains unaffected so long as payments are made to proper claimants or any of the proper claimants. The role of a proper claimant as contemplated by s 44 is to receive the moneys on behalf of the estate of the deceased. Section 44(5) does not confer any authority on a proper claimant to utilize the moneys for his or her own use, and if he or she happens to be one of the beneficiaries of the deceased's estate, not until after obtaining the distribution order under the relevant law.

[Bahasa Malaysia summary

Plaintif telah membeli satu polisi insurans nyawa ('polisi itu'), atas nyawa anak lelakinya, Magindran s/o Perumal ('si mati'), yang telah meningggal dunia pada 25 Ogos 1991 akibat suatu kemalangan jalanraya. Si mati pada ketika itu berusia 16 tahun dan masih bujang. Polisi itu telah dikeluarkan dengan komen 'tidak diakui' di sebelah umur 16 tahun yang dinyatakan di dalam jadual kepada polisi itu dan borang permohonan itu mengandungi perkataan, 'Bukti tentang umur mesti dikemukakan dengan borang permohonan ini atau tidak lama selepas penerimaan'. Tidak ada benefisiari yang dinamakan di dalam polisi dan plaintif telah membawa tindakan ini di dalam keupayaannya sebagai suatu pihak menuntut yang betul (proper claimant). Plaintif telah mengemukakan kepada defendan suatu 'Permohonan tuntutan kematian' dan diminta untuk mengemukakan beberapa dokumen tertentu, termasuk surat beranak si mati, untuk menunjukkan bahawa beliau adalah penuntut yang betul dan tunggal tetapi tidak berbuat demikian hingga 11 Julai 1994. Semasa ini, apabila bayaran tidak dibuat, plaintif telah memfailkan saman pemula ini pada 2 Jun 1993 untuk memohon, antara lain: (a) suatu deklarasi bahawa plaintif berhak di sisi undang-undang untuk mendapatkan kesemua wang di bawah polisi yang dikeluarkan oleh defendan dan diambil atas nama

si mati; (b) suatu perintah bahawa defendan seharusnya membayar wang polisi itu kepada plaintif dalam keupayaannya sebagai pihak menuntut yang betul mengikut maksud s 44 Akta Insuran 1963 ('Akta itu'); (c) faedah pada kadar 8% setahun atau lebih dari tarikh kematian si mati; dan (d) kos. Isu di hadapan mahkamah adalah sama ada pengemukaan surat beranak si mati itu merupakan suatu syarat terdahulu kepada pembayaran wang polisi itu.

Diputuskan, memerintahkan bayaran wang polisi kepada plaintif tetapi tidak membenarkan tuntutan plaintif untuk faedah kerana bayaran lewat:

(1) Defendan telah memenuhi keperluan s 15A Akta itu dengan mengeluarkan suatu notis bercetak di atas polisi itu yang menyatakan bahawa bukti tentang umur si mati mungkin diperlukan sebelum wang insurans itu dibayar. Lagipun, oleh kerana bayaran akan dibuat atas bukti yang mencukupi diberikan kepada defendan tentang, antara lain, ketepatan tarikh lahir si mati, bukti sedemikian merupakan suatu syarat terdahulu kepada pembayaran wang polisi itu.

(2) Memandangkan perkataan di dalam s 44 Akta itu, adalah jelas bahawa wang yang kena dibayar di bawah suatu polisi nyawa boleh dibayar kepada seorang penuntut yang betul. Bagaimanapun, di dalam kes ini, wang itu kena dibayar hanya bila terdapat kepatuhan dengan tiga prasyarat yang dinyatakan di dalam polisi itu. Oleh itu, perkataan 'kena dibayar' di dalam s 44 Akta itu merujuk kepada obligasi untuk membayar tetapi tidak semestinya degan segera atas kematian seseorang itu.

(3) Plaintif berhak mendapatkan kesemua wang polisi itu jika tidak ada benefisiari lain kepada harta pusaka si mati. Oleh kerana harta pusaka si mati tidak diberikan wang polisi itu, plaintif berhak mendapat faedah 8% setahun atas wang polisi itu dari tarikh apabila surat beranak si mati telah disampaikan kepada defendan, iaitu 11 Julai 1994, dan bukan dari tarikh kematian.

Obiter:

Di mana benefisiari ternama di dalam suatu polisi nyawa tidak layak sebagai seorang penuntut yang betul, kedudukan syarikat insurans tidak terjejas asalkan bayaran dibuat kepada penuntut yang betul atau salah seorang penuntut yang betul. Peranan seorang penuntut betul seperti yang dibayangkan oleh s 44 ialah untuk menerima wang itu bagi pihak harta pusaka si mati. Seksyen 44(5) tidak memberikan kuasa kepada seorang penuntut yang betul untuk menggunakan wang itu untuk kegunaan sendiri, dan jika beliau merupakan salah satu daripada benefisiari harta pusaka si mati, tidak sehingga beliau mendapatkan perintah pembahagian harta di bawah undang-undang yang relevan.]

Notes

For cases on life insurance, see 8 *Mallal's Digest* (4th Ed) paras 40–51.

Cases referred to

Manonmani v Great Eastern Life Assurance Co Ltd [1991] 1 MLJ 364 (refd)

United Malayan Banking Corp v Syarikat Perumahan Luas Sdn Bhd [1991] 3 MLJ 181 (folld)

Legislation referred to

Civil Law Act 1956 s 11

Insurance Act 1963 ss 15A, 44

G Naidu (*G Naidu & Partners*) for the plaintiff.

B Balakumar (*Azim, Ong & Krishnan*) for the defendant.

Idris Yusoff J: This originating summons is brought by the plaintiff on this state of facts:

The plaintiff is the father of the assured, one named Magindran s/o Perumal, who died on 25 August 1991 following a motor accident. At the time of his death the deceased was still single and was about 16 years and 4 months in age.

About four months before his death, ie on 24 December 1990, the deceased submitted 'a proposal for assurance' coupled with a 'declaration and authorization' to the defendant which was subsequently accepted. The policy was issued by the defendant on 8 January 1991, vide exh PM–(A)'. It is noted that the deceased's age as stated in the policy schedule is 16 years and this is presumably taken from the proposal form. However, there is a remark 'not admitted' against the figure 16. It is also noted that there is a footnote in para 3 of the proposal form in the following words, 'Evidence of age must be submitted with this proposal form or soon after acceptance'. There is no beneficiary named in the policy and thus the claim is made by the plaintiff in his capacity as a 'proper claimant'.

Following the death of the deceased, the plaintiff submitted to the defendant a 'Death claim application'. It is not known when the application was actually submitted as it bears no date in spite of it being witnessed by an advocate and solicitor.

When no payment was made, the plaintiff then on 2 June 1993 filed this originating summons seeking the following reliefs:

(a) a declaration that the plaintiff is legally entitled to all policy moneys under 'an endowment policy No L0407392' issued by the defendant and taken out in the name of the deceased;

(b) an order that the defendant pays the said policy moneys to the plaintiff in his capacity as a proper claimant within the meaning of s 44 of the Insurance Act 1963 ('the Act');

(c) interest at the rate of 8%pa or at any higher rate effective from the date of the deceased's death; and

(d) costs.

From the affidavit-in-reply deposed by Encik Chandrarajah, pengurus bahagian perkhidmatan pelanggan, on behalf of the defendant and the exhibits thereto, it is observed that the plaintiff had been requested to furnish certain documents to indicate that he is the sole proper claimant, and among the documents requested for was the deceased's birth certificate. For some reason, the plaintiff was not able to produce the said certificate and it was only on 11 July 1994 that the defendant was finally served by the plaintiff with the certified copy of the requisite birth certificate. On the strength of the said birth certificate the defendant concedes that the plaintiff is a proper claimant and is therefore entitled to be paid the policy moneys. Be that as it may, the defendant claims that in no way can it be held responsible for the delay in paying out the policy moneys. The defendant maintains that the birth certificate constitutes a vital document in the determination of the deceased's age at the time of his death and this request is in line with the provisions of s 15A of the Act whereupon proof of the age of the deceased in the circumstances can be termed as a condition precedent to the payment of the sum insured.

For the plaintiff, it is contended that as the defendant seems to be aware that the plaintiff was the sole surviving parent of the deceased, there was therefore no necessity for the production of the birth certificate. I think I should pause here to clarify what the defendant actually said in one of the letters to the plaintiff's counsel. It says 'It is noted in the proposal form that Encik Perumal s/o Manickam (the plaintiff in this summons) is the sole surviving parent of the deceased. Please confirm the statement'. There seems to be nothing in the letter even to suggest, let alone confirm that the defendant had acknowledged the plaintiff as the father of the deceased.

The crux of the matter, having regard to the affidavits of both parties, is whether the production of the birth certificate is a condition precedent to the payment of the policy moneys. In this respect, counsel for the plaintiff contends that nowhere in the policy was it stated that 'the production of the birth certificate shall be a condition precedent to the payment' of the policy moneys. He goes on to say that even if it is held that it is a condition precedent, the defendant has failed to comply with s 15A of the Act, thus he says that the death certificate in itself is sufficient since 'it is issued by the authorities'. I regret to say that I am not with him on this point.

Section 15A of the Act says:

> Where an insurer issues a life policy which provides that proof of age of the life insured is a condition precedent to the payment of the sum, the insurer shall, unless the age of the life insured has already been admitted by the insurer, issue on or with the policy a printed notice stating that proof of age of the life insured may be required prior to the payment of the sum insured.

A On reference to the policy there is stated under the heading 'Consideration':

> In consideration of the payment by the assured to the society of a first premium of the amount specified as basic premium in the Schedule and also in consideration of the payment to the society of a renewal premium of the same amount immediately upon the expiration of each premium interval (the first of which shall be computed from the entry date) which shall occur before: (a) the end of the term; or (b) the death of the life assured whichever of such events shall first happen, the society will pay at its head office for the time being, the basic sum assured to the assured or the executors, administrators or assigns of the assured on delivery of this policy document and on proof satisfactory to the society being given of: (a) the survival by the life assured of the term or the death of the life assured whichever of such events shall first happen; (b) the title of the claimant; and (c) *the correctness of the date of birth of the life assured as stated in the proposal and declaration.* (Emphasis added.)

From the above excerpt, it is obvious that payment would be made upon proof satisfactory to the defendant being given on, amongst others, the correctness of the date of birth of the deceased as stated in the proposal and declaration. And since it is clearly spelt out as such, to my mind, the defendant has fulfilled the requirement of s 15A by issuing 'on the policy a printed notice' stating that proof of the age of the deceased may be required prior to the payment of the sum insured. Quite apart from the statutory requirement, the footnote in para 3 of the proposal form (which is declared to be the basis of the contract of insurance as indeed admitted to by plaintiff's counsel) requires that evidence of age of the deceased be submitted with the form or soon after acceptance, all the more when in this case the defendant had not admitted the age of the deceased as given in the form.

In view of the foregoing, I hold that proof of the correctness of the deceased's date of birth as stated in the proposal and declaration constitutes a condition precedent to the payment of the policy moneys.

It is also submitted by counsel for the plaintiff that on the authority of *Manonmani v Great Eastern Life Assurance Co Ltd* [1991] 1 MLJ 364, which explains the purport and meaning of s 44 of the Act, the defendant should now be held responsible for the delay in the payment of the policy moneys. In that case, his Lordship Eusoff Chin J (as he then was) held amongst others [at p 369] that:

> ... The purpose of s 44 of the Insurance Act 1963 is no doubt to facilitate and expedite payment by an insurer of any money due under a life policy to a 'proper claimant' without the need for the claimant to first obtain any letters of administration. This section would, I believe, apply where the deceased policy owner either had not appointed and named any beneficiary in the policy to receive the policy money upon his death in which case the policy money would go to his estate, or he had specifically stated in the policy that the policy money should go to his estate when he died. In that event, the insurer is nevertheless authorized by this section to pay out the policy money to a 'proper claimant' as described under s 44(5) of the Insurance Act 1963 ...

For convenience, I reproduce below what s 44 says:

> Payment of life policy claim without probate, etc.
>
> 44 (1) When a policy owner, in relation to any life policy or life policies, *dies and on his death policy moneys are payable under the policy or policies*, the insurer may make payment to a proper claimant such sum of the policy moneys as may be prescribed without the production of any probate or letters of administration and the insurer shall be discharged from all liability in respect of the sum paid. (Emphasis added.)
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> ...
>
> (5) In this section, 'policy owner' includes a part owner of a policy, and 'proper claimant' means a person who claims to be entitled to the sum in question as executor of the deceased, or who claims to be entitled to that sum (whether for his own benefit or not) and is the widower, widow, parent, child, brother, sister, nephew or niece of the deceased; and in deducing any relationship for the purposes of this subsection an illegitimate person shall be treated as the legitimate child of his actual parents.

In view of the words emphasized, it is clear that moneys that are payable under the policy can be paid to the proper claimant — but when can it be said that moneys are payable under the policy — could it be said that immediately upon the death of the deceased. I have grave doubts if it is truly to be interpreted as such. To my mind to ascertain when the policy moneys are payable, the court in the circumstances has also to take cognisance of the relevant terms of the policy. And as I have indicated earlier there ought to be due compliance with the three prerequisites as set out under 'Consideration' before the policy moneys are payable — and these are terms relevant in the policy. I am therefore inclined to say that the words 'are payable' refer to the obligation to pay, though not necessarily that payment should be made immediately upon death.

Next comes the question of interest. Counsel for the plaintiff claims that interest at 8%pa or at any higher rate is payable on the policy moneys from the date of death in view of the delay in settling the claim.

In reply, counsel for the defendant denies any unlawful or unjust withholding of the moneys. He says that delay could easily be obviated if the birth certificate could have been made available to the defendant in the early stages of the correspondence between the parties. In the event, he disagrees that the delay could be attributed to the defendant. Still on interest, counsel for the defendant feels that there are no provisions in the policy to entitle the plaintiff to claim for interest on 'overdue' payment. If at all the court is mindful of payment of interest, the substantive provision regarding the interest element can perhaps be found in s 11 of the Civil Law Act 1956. Section 11 says:

> In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

A Provided that nothing in this section—

(a) shall authorise the giving of interest upon interest;

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(c) shall affect the damages recoverable for the dishonour of a bill of
B exchange.

Counsel submits that the policy moneys due to the plaintiff neither rank as a debt nor as damages. He claims that the pronouncements prayed for in the present proceedings do not crystallize as a judgment, rather as an order of the court.

C On the other hand, counsel for the plaintiff argues that the word 'debt' has been defined in the *Dictionary of Law* by LB Curzon as:

> A sum that one person is bound to pay to another. Debt normally has one or other of two meanings: it can mean obligation to pay money or it can mean a sum of money owed.

D *Stroud's Judicial Dictionary* says 'A debt is a sum payable in respect of a liquidated money demand, recoverable by action'. The *Oxford Companion to Law* speaks of a debt as 'that which is owed by one person to another, particularly money payable arising from and by reason of a prior promise or contract ...'. For myself, to resolve this issue I would only content
E myself with what had been said by Edgar Joseph Jr J (as he then was) in *United Malayan Banking Corp v Sykt Perumahan Luas Sdn Bhd* [1991] 3 MLJ 181 at p 186:

> It is too well known to need citation of authority that the object of an award of interest is not to compensate a successful party for any damage done but
F for him being kept out of his money.

In the instant case, it is clear that the estate of the deceased has been kept out of the insurance moneys to which it is entitled. In the final analysis, I hold that the plaintiff is entitled to payment of interest on the policy moneys, but not from the date of the deceased's death as claimed; it is
G payable only from the date when the deceased's birth certificate was served on the defendant, viz 11 July 1994.

For the purpose of guidance, counsel for the defendant raises an ancillary issue regarding the position of the insurers upon making payment under s 44 to a proper claimant. Following the decision in *Manonmani*, he
H says the position of the insurers has now been made clear. The insurers are absolved from further liabilities under the policies once the policy moneys are paid to proper claimants and what is more, if the beneficiary named in the policy is a person who comes within the category of a proper claimant the moneys should be disbursed to the said person. However, there is one fear raised by him where in a certain situation, the named beneficiary does
I not qualify to be a proper claimant. It would appear to him that in the situation of that nature, the operation of s 44 may cause confusion on the part of the insurers especially when there is more than one proper claimant. With respect, I think the defendant should not be unduly concerned about

this for the position of the insurers still remains unaffected so long as payments are made to proper claimants or any of the proper claimants. This is because the role of a proper claimant as contemplated by s 44 is to receive the moneys on behalf of the estate of the deceased. Subsection (5) of the said section does not confer any authority on a proper claimant to utilize the moneys for his or her own use — and if he or she happens to be one of the beneficiaries of the deceased's estate, not until after obtaining the distribution order under the relevant law.

Accordingly I hold that:

(a) the plaintiff is entitled to all the policy moneys under the 'Endowment Policy No L0407392' issued by the defendant and taken out in the name of the deceased if there be no other beneficiary to the estate of the deceased;

(b) the defendant is ordered to pay the said policy moneys to the plaintiff in his capacity as a proper claimant within the meaning of s 44 of the Act;

(c) interest at the rate of 8%pa to be paid to the plaintiff which is to take effect from 11 July 1994 till the date of full payment of the policy moneys; and

(d) each party is to bear its own costs.

Order accordingly.

Reported by Anne Khoo